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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

GRAY, LINDA LAMEY

ART UNIT	PAPER NUMBER
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1734

DATE MAILED: 07/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/815,787

Applicant(s)

KUEN ET AL.

Examiner

Linda L Gray

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9-15-01, 3-23-01, 5-2-03, 3-20-03, 6-2-03, 1-30-03, & 4-12-04
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 27 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17-26 is/are allowed.
- 6) ☒ Claim(s) 1-10, 12 and 14-16 is/are rejected.
- 7) ☒ Claim(s) 11 and 13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 September 2001 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ***
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Detailed Action

Election/Restriction

1. Claim 27 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made without traverse in the reply filed on 4-12-04. It is noted that claim 27 is still an independent product claim which is restrictable from claims 1-26.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 7, 9, 12, and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7, "the side panel web" lacks antecedent. Also, see the same in **claims 9 and 14**.

Claim 12, "the first and second fasteners" lacks antecedent basis.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless – (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-5, 8-9, and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Nease et al. (US 5,580,411).

Claim 1, Nease et al. teach a method of making refastenable garment 20 with attached side panels 30 including:

- a) providing garment chassis web 205 with a longitudinal axis in a machine direction and edges opposed in the cross machine direction,
- b) providing side panels 30 have a first fastener disposed on panels 30, the first fastener disposed between a waist end edge and a leg end edge of panels 30,
- c) overlaying panels 30 on web 205 and securing panels 30 to web 205 whereby panels 30 lay substantially between the edges of web 205, and
- d) providing a cooperating fastener disposed on web 205, the cooperating fastener spaced from the first fastener along the axis of web 205 (c 3, L 19, to c 11, L 5).

Claims 2-5, as shown in the drawings of Nease, panels 30 are conterminous with the edges of web 205 along the edges of panels 30, panels 30 also extend beyond the edges, and panels 30 also have a portion within the edges of web 205. **Claim 8**, Nease et al. teach individuating garment 20 by through-cutting the garment web in the cross direction. **Claim 9**, Nease et al. teach bonding panels 30, having the fastener, to web 205 via ultrasonic or adhesive bonding. **Claim 14**, web 30 is made from material which can stretch in the traverse direction of garment 20 (c 3, L 45, to c 4, L 32). **Claims 15-16**, Figure 9 demonstrates a side panel 30 leg end edge which is sinusoidal and not straight.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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7. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nease et al.

Claim 6, in Nease et al. web 205 and panels 30 make a garment web having first (top) and second (under) surfaces with the first fastener extending from the first surface where the first and second surfaces are opposite each other.

***Claim 6**, Nease et al. do not teach that the cooperating fastener extends from the second surface instead of the first surface.*

However, it is conventional to place fasteners on the underside of a chassis instead of the top side.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Nease et al. that the cooperating fastener extends from the second surface instead of the first surface because such is a conventional alternative placement position.

8. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nease et al. as applied to claims 1-5, 8-9, and 14 above, and further in view of Davis (US 4,568,342).

***Claim 10**, Nease et al. do not teach specifics about the first fastener, i.e., that such are a loop or hook material.*

However, Davis teaches loop/hook fasteners to be conventional.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Nease et al. that the first fastener is a loop or hook material because Davis teaches such to be a conventional alternative in the art, and it obvious to replace one fastener type with another art recognized alternative fastener type.

9. Claims 1-9 and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wada (WO 84/04242) in view of Nease et al.

Claim 1, Wada teaches a method of making refastenable garment 1 with attached side panels 2 including:

- a) providing garment chassis web 8 with a longitudinal axis in a machine direction and edges opposed in the cross machine direction,
- b) providing side panel 2 having a first fastener 4 disposed between a waist end edge and a leg end edge of panel 2, and
- c) overlaying panel 2 on web 8 and securing panel 2 to web 8 whereby panel 2 lay substantially between the edges of web 8 (pg 3-6).

Claim 1, *Wada does not teach providing a cooperating fastener disposed on web 8 with the cooperating fastener spaced from fastener 4 along the axis of web 8.*

However, in view of Nease et al. it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Wada providing a cooperating fastener disposed on web 8 with the cooperating fastener spaced from fastener 4 along the axis of web 8 because Nease et al. teach that providing such is conventional in the art of making disposable refastenable garments where a second cooperating fastener in Wada would double layer the side area of the garment during use thus making such more stable in that area.

Claims 2-5, as shown in the drawings of Wada, portions of panel 2 are conterminous with the edges of web 8, portions of panel 2 also extend beyond the edges, and panel 2 also has a portion within the edges of web 8.

Claim 6, in Wada web 8 and panel 2 make a garment web having first (top) and second (under) surfaces with the first fastener extending from the first surface where the first and second surfaces are opposite each other.

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Claim 6, Wada does not teach that the cooperating fastener extends from the second surface instead of the first surface.

However, it is conventional to place fasteners on the underside of a chassis instead of the top side.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Wada that the cooperating fastener extends from the second surface instead of the first surface because such is a conventional alternative placement position

Claim 7, Wada teaches providing one line of weakness 3 in panel 2 and fastener 4 at a longitudinal axis of fastener 4 to form two side panels each comprising a portion of fastener 4.

Claim 8, Wada does not teach cutting web 8 in the cross direction to individuate garment 1.

However, Nease et al. teach individuating disposable refastenable garments by cutting a plurality from a long web 205 instead of making each garment one by one.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Wada cutting web 8 in the cross direction to individuate garment 1 because Nease et al. teach that individuating disposable refastenable garments by cutting a plurality from a long web 205 allow one to make more than one garment in a single pass instead of making each garment one by one.

Claim 9, Wada teaches securing panel 2, having fastener 4, to web 8 via adhesive. **Claim 14**, web 2 is made from material which can stretch in the traverse direction of garment 1.

Claims 15-16, Wada does not teach panel 2 to have leg end edges that are not straight but sinusoidal.

However, Nease et al. demonstrate a non-straight sinusoidal edge to be conventional where such would provide a better fit for the wearer in that area.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Wada that the web leg end edge is not straight but sinusoidal because Nease et al. demonstrate a non-straight sinusoidal edge to be conventional where such would provide a better fit for the wearer in that area.

10. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wada in view of Nease et al. as applied to claims 1-9 and 14-16 above, and further in view of Davis.

Claim 10, Wada does not teach fastener 4 to be a loop or hook material instead of an adhesive.

However, in view of Davis, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Wada that fastener 4 is a loop or hook material instead of adhesive because Davis teaches such to be a conventional alternative in the art, and it obvious to replace one fastener type with another art recognized alternative fastener type.

Double Patenting

11. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

12. Claims 1-10 and 14 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-30 of U.S. Patent No. 6,635,135 B2 and claims 1-18 of U.S. Patent No. 6,652,696 B2.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the limitations of claims 1-10 and 14 of the application are within the claims of the patent.

13. Claims 15-16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-30 of U.S. Patent No. 6,635,135 B2 or U.S. Patent No. 6,652,696 in view of conventional prior art.

Side panels with sinusoidal web leg end edges are conventional for a better fit to the wearer.

Allowable Subject Matter

14. Claims 11 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 12 would be allowable if rewritten to overcome the rejection under 35 U.S.C. 112, second paragraph, set forth in this Office action.

Claims 17-26 are allowable.

15. The following is a statement of reasons for the indication of allowable subject matter:

claim 17: Nease et al. do not teach providing one of a through-cut or a line of weakness in one of panels 30 at a longitudinal axis of the first fastener to form two side panels each including a first fastener,

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claims 11 and 17: Nease et al. teach the first faster to be outboard of the width edge of web 205 but does not teach that such occurs by folding a panel 30 in a position partly inboard of one of the width edges,

claims 11, 17, and 23: Wada teaches fastener 4 to be outboard of the width edge of web 8 in Figure 4 but does not teach that such occurs by folding a panel 2 in a position partly inboard of one of the width edges,

claim 23: Nease et al. do not teach separating a panel 30 at a longitudinal axis to create two first and second side panels after panel 30 is secured to web 205; and, Nease et al. teach the first faster to be outboard of the width edge of web 205 but does not teach that such occurs by folding a panel 30 in a position partly inboard of one of the width edges, and

16. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

Conclusion

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Linda Gray whose telephone number is (571) 272-1228. The examiner can normally be reached Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino, can be reached at (571) 272-1226. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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June 28, 2004 *elg*

Linda L Gray
LINDA GRAY
PRIMARY EXAMINER